**STATE OF ILLINOIS**
**LIQUOR CONTROL COMMISSION**



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|---|---|---|
| In the Matter of: | ) | No. 12 C 100220 |
| | ) | No. 12 C 100221 |
| City Beverage – Markham, LLC | ) | |
| d/b/a City Beverage Markham | ) | |
| 2064 W. 167th St. | ) | |
| Markham, IL 60428 | ) | |
| In the Matter of: | ) | No. 12 C 100222 |
| | ) | No. 12 C 100223 |
| City Beverage – Markham, LLC | ) | |
| d/b/a City Beverage – Arlington Heights | ) | |
| 1401 E. Algonquin Rd. | ) | |
| Arlington Heights, IL 60005 | ) | |
| In the Matter of: | ) | No. 12 C 100218 |
| | ) | No. 12 C 100219 |
| Chicago Distributing, LLC | ) | |
| d/b/a City Beverage – Chicago | ) | |
| 4841 S. California Ave. | ) | |
| Chicago, IL 60632 | ) | |
| In the Matter of: | ) | No. 12 C 100216 |
| | ) | No. 12 C 100217 |
| City Beverage, LLC | ) | |
| d/b/a City Beverage | ) | |
| 1105 E. Lafayette Ave. | ) | |
| Bloomington, IL 61701 | ) | |

## MEMORANDUM

On July 16, 2012, Siegel, Moses & Schoenstadt, P.C., on behalf of its clients, Burke Beverage, Inc., Chas. Herdrich & Sons, Inc., Chicago Beverage Systems, LLC, Euclid Beverage, Ltd., Hayes Beer Distributing Company, Joseph Mullarkey Distributors, Inc., Kloss Distributing Co., Inc., Kozol Bros., Inc. and Town & Country Distributors, Inc., timely filed the requisite Notice of Intent to Submit Memorandum with the Illinois Liquor Control Commission

("Commission") on the issues raised by these proceedings, and in support thereof, provides this Memorandum.

## I. PROCEEDINGS

In each of the four charging documents issued by the Commission, revocation is sought of the Distributer and Importing Distributers Licenses (collectively "Distributor Licenses") held by the four City Beverage licensees (collectively "City Beverage"). Revocation is sought due to the ownership interest of Anheuser-Busch, LLC or its affiliate (collectively "AB"), a manufacturer of beer and holder of a Non-Resident Dealer License, in City Beverage which the Commission previously found is precluded by the Illinois Liquor Control Act inclusive of Illinois Public Act ("P.A.") 97-0005, commonly known as the "Craft Brewer's Act" (collectively the "Act"). As to the penalty of revocation, the Commission, in its charging documents, has asserted it shall stay the same pending divesture of AB's ownership interests in City Beverage.

## II. ISSUES PRESENTED

As to the issues raised in these proceedings and to be addressed herein, we anticipate they are generally twofold: 1) as a matter of law is AB precluded from holding any ownership interest in City Beverage, and 2) despite preclusion, as a matter of law, do principles of equitable estoppel apply so as to bar the Commission from precluding AB's pre-existing ownership interest in City Beverage.

## III. ARGUMENT

### A. As a matter of law, AB is precluded from holding any ownership interest in City Beverage.

Since 1982, the Act has prohibited Non-Resident Dealers (*i.e.*, out-of-state Brewers) from distributing in Illinois. The Commission enforced this provision of the Act in a March 10, 2010

Declaratory Ruling that prohibited AB, a licensed Non-Resident Dealer, from purchasing further interests in City Beverage. At that time the Commission did allow AB to retain the 30% share in City Beverage that it had acquired in 2005.

In the wake of the Commission's Order, AB filed an action against the Commission in the United States District Court for the Northern District of Illinois. *Anheuser-Bush, Inc. v. Schnorf,* 738 F. Supp. 2d 793 (2010). AB alleged that, under the Commission's interpretation of the Act, the Act's differential treatment of in-state and out-of-state Brewers violated the Commerce Clause of the United States Constitution.

On September 3, 2010, the District Court ruled that this differentiation did indeed violate the Commerce Clause. Adopting the Commission's construction of the Act, the District Court explained that, under the Act, "on account of its non-resident status, an out-of-state brewer may not possess an ownership interest in a licensed Illinois distributor." *Id.* at 796. There was, in the District Court's view, no adequate justification for this differential treatment.

Having found that the Act thus violated the Commerce Clause, the District Court turned to the question of whether to remedy that discrimination by (a) extension (*allowing* all Brewers – both in-state and out-of-state – to act as Distributors) or (b) nullification (*barring* all Brewers – both in-state and out-of-state – from acting as Distributors). In deciding between these two approaches, the District Court explained that it was seeking to choose the option that would do less damage to the overall statutory scheme and approach. Given the Act's fundamental commitment to the three-tier licensing system, the District Court decided that "nullification" (*i.e.,* refusing to allow any Brewers to serve as Distributors) was the better remedy. *Id.* at 811-15. The District Court, however, decided to stay its ruling in order to allow the Illinois Legislature an opportunity to decide how it wished to proceed. So long as it did not perpetuate

the discrimination against out-of-state producers, the Legislature was free to (a) grant the right to distribute to all Brewers, (b) to deny that right to all Brewers, or (c) to fashion some other non-discriminatory approach, such as an exception that allowed small Brewers (both in-state and out-of-state) to self-distribute. *Id.* at 815-17.

The Legislature responded by enacting P.A. 097-0005. This section of the Act created a new classification of "Craft Brewer" for in-state or out-of-state Brewers who manufacture up to 465,000 gallons of beer per year. See, 235 ILCS 5/1-3.38. The right to serve as both a Brewer and a Distributor is limited to this class alone. See, 235 ILCS 5/3-12(a) (18). Otherwise, the Act deleted the earlier provision that had allowed in-state Brewers to be licensed as Distributors. There is no doubt, then, that the Act, as amended by P.A. 097-0005, bars any in-state or out-of-state Brewer from serving as a Distributor, except for the narrow exception for Craft Brewers.

The plain language of the Act makes all this clear, and the plain evidence of legislative intent unmistakably confirms this. The Legislature was acting in direct response to the decisions of the Commission and the District Court, which interpreted the Act as prohibiting a Non-Resident Dealer from holding an ownership interest in an Illinois Distributor. Had this construction been mistaken, the Legislature could easily have passed a statute that allowed Non-Resident Dealers to hold such interests. It did just the opposite, though it barred even resident Brewers from holding such interests (save for the Craft Brewer exception that is available to both in-state and out-of-state Brewers).

Even without this kind of direct evidence that the Legislature was responding to a judicial decision, "[a] court presumes that the legislature amends a statute with knowledge of judicial decisions interpreting the statute." *Hubble v. Bi–State Development Agency,* 238 Ill.2d 262, 273 (2010). Here, the entire impetus for the legislative action leaves no doubt that the Legislature

was responding to the construction of the Act as barring Non-Resident Dealers from holding ownership interests in an Illinois Distributor. The statement of the sponsor of the bill (leading to the passage of P.A. 97-0005) in the General Assembly, Representative Frank Mautino, confirms this. He explained that the "bill is in response to the court case which many of you have heard about." He further explained that:

> "This bill, except for the craft-brewer exemption, continues the prohibition against self-distribution for out-of-state brewers and clearly extends that prohibition to Illinois brewers. The out-of-state brewers and Illinois brewers are treated equally as required by the Commerce Clause provisions of the US Constitution. *In other words, all brewers in-state and out-of-state manufacturing beer above the craft brewer limits may not self distribute or own distributorships in Illinois.*"
>
> (See, Statement of Frank Mautino, attached as Exhibit "A".)

Significantly, Representative Mautino indicated that the bill was the product of extended conversations with the stakeholders, including "about 10 meetings with AB, the Craft Brewers Guild, MillerCoors, Wine and Spirit Distributors of Illinois and the Illinois Licensed Beverage Association." (See, Exhibit A.) It cannot be disputed that during the course of these discussions, AB aggressively sought a grandfather provision to allow it to continue to hold its 30% share in City Beverage. Yet, the Legislature refused to enact any such provision. Rather, it enacted an across-the-board prohibition that precludes any Brewer (aside from a Craft Brewer) from holding an interest in an Illinois Distributor.

Under the now-governing law, effective June 1, 2011, a manufacturer such as AB may not act as an Illinois Distributor, nor hold an ownership in an Illinois Distributor, unless the manufacturer qualifies as a Craft Brewer, in which case it is permitted to self-distribute some of its own product. This general prohibition now applies equally to both in-state and out-of-state manufacturers inclusive of AB.

Even if one accepts City Beverage's contention that it was authorized to hold the Distributor Licenses under the prior Act, that position holds no water under the new amendment to the Act. That change in authorization to prohibition falls under the Legislature's classic police powers. These police powers are even more robust in the liquor context. The Illinois Supreme Court stated that "the business of selling liquor is not favored; no inherent right exists to carry it on and it may be entirely prohibited." *Daley v. Berzankis*, 47 Ill. 2d 395, 398 (1971).

City Beverage is similar to any other licensed entity that operates within the highly regulated alcoholic beverage industry. Every license issued by the Commission expires by its terms within one year from issuance. See, 235 ILCS 5/5-2. City Beverage, like every other licensed entity, must re-apply and re-qualify each year for purposes of renewal. City Beverage, like every other licensed entity, holds its rights or more accurately, privileges, subject to the Legislature's authority to change the law prospectively inclusive of the qualifications to continue to renew or hold such license. See, 235 ILCS 5/6.1-1. One may have a retail liquor license renewed every year through 2012, but if the Legislature changes the qualifications to hold any license, and the licensee no longer meets those qualifications, the license cannot be renewed. Similarly, if voters, through a local option referendum, outlaw retail liquor licenses within a political subdivision, such as a precinct in Chicago, there is no recourse, and a liquor license is extinguished within 30 days after the date of the election, if votes are cast in the case of a local option referendum. See, 235 ILCS 5/9-1 -5/9.

Therefore, to the extent there was any debate about whether the pre-2011 Act barred AB as a Non-Resident Dealer from holding any interest in, or acting as Distributor, and without recourse, that debate has been put to rest by the clear and unequivocal dictates of P.A. 97-0005. Therefore, the Distributor Licenses of City Beverage should be revoked, and as in the case of any

change in qualifications or a local option election, without necessity of any stay pending AB's disposition of its interest in City Beverage.

### B. Principles of either equitable estoppel cannot apply so as to bar the Commission from precluding AB's pre-existing ownership interest in City Beverage.

It appears likely that City Beverage will assert that because it has been issued Distributor Licenses since 2005, despite AB's ownership interest, the Commission is equitably estopped from now revoking those Licenses. The governing law squarely forecloses this claim for a number of independent reasons.

#### 1. The Commission has no Authority to Ignore the Act.

When a statute clearly bars an agency from taking an action, the agency is not permitted to disregard that statute in the name of equity or any other justification. This rule governs here and precludes the issuance of any license that is inconsistent with the dictates of the new statute and amended Act. As explained above, the Act – particularly as reenacted by P.A. 97-0005 – is clear in flatly prohibiting any producer (other than a Craft Brewer) from acting as a Distributor. This law binds the Commission and must be enforced.

There is no provision in the Act allowing the Commission to ignore the Act's dictates in the name of equity. As the Illinois Supreme Court has explained, "When a statute has prescribed a plain rule, free from doubt and ambiguity, it is a usurpation to ignore the statute by granting equitable relief, for to relieve against its provisions, is the same as to repeal it." *Illinois Dep't of Healthcare & Family Service ex rel. Wiszowaty v. Wiszowaty*, 239 Ill. 2d 483, 489-490 (2011).

This same principle applies in full force to administrative agencies. "It is not within the province of an administrative agency or court to take from or enlarge the meaning of a statute by reading into it language which will, in the opinion of either, correct any supposed omissions or defects." *MCI Worldcomm Communications, Inc. v. Metra Commuter Rail Div. of Regional*

*Transport Authority*, 337 Ill. App. 3d 576, 581 (2nd Dist. 2003) (quoting *American Steel Foundries v. Gordon*, 404 Ill. 174, 180-181 (1949)); and *Miller v. Hill*, 337 Ill. App. 3d 210, 220 (3rd Dist. 2003).

The Appellate Court's decision in *Easter Enterprises, Inc. v. Illinois Liquor Control Commission*, 114 Ill. App. 3d 855 (3d Dist. 1983), is instructive here. The store in *Easter Enterprises* had been issued a license for the retail sale of liquor, but, years later, the Commission revoked the license on the ground that the store was within 100 feet of a school (in violation of the Act). Neither the location of the school, nor that of the store had changed since the original license was issued. Yet, upon realizing that the issuance of the license was inconsistent with the Act, the Commission revoked the license. The Appellate Court affirmed, explaining that:

> "We believe that the sanction of *revocation was proper and the sole sanction available to the Commission* in this type of proceeding. Because the plaintiff was in violation of a statute which stated that a license would not issue under certain circumstances, the *Commission had no choice but to revoke the plaintiff's license. This result was mandated by statute."* (*Id.* at 860, emphasis added).

**2. There is No Claim of Equitable Estoppel that Applies Here.**

First, as the Court held in *Armond v. Sawyer*, 205 Ill. App. 3d 936 (1st Dist. 1990), "the doctrine of estoppel does not apply to the unauthorized renewal of [a] liquor license." *Id.* at 939. This rule defeats any claim of equitable estoppel. [1]

[1] Although the Commission has no power to ignore the *law* in the name of equity, it does have power to find that a particular party is estopped from contesting some particular *fact* it has acknowledged in the past, and upon which a licensee has reasonably relied. Thus, in *City of Wyoming v. Liquor Control Commission*, 48 Ill. App. 3d 404 (3d Dist. 1977), the City was not allowed to suddenly assert that a local ordinance, upon which a license had issued and upon which the licensee had reasonably relied, had never been properly passed by the City Council. This type of estoppel, which relates to the waiver of a party's right to contest a fact in controversy, has nothing to do with the Commission's entitlement (or, more accurately, lack of entitlement) to ignore the Act.

Second, in *Armond*, the Court held that there can be no reasonable reliance (a prerequisite to any claim of equitable estoppel) when the law establishes that a license that was granted is void. *Id.* at 939. (See also, *Bank of Pawnee v. Joslin,* 166 Ill. App. 3d 927 (4th Dist. 1988), holding that individuals are charged with knowledge of the law and therefore, cannot claim estoppel by a government official's actions to the contrary.)

Here, the Commission issued the Distributor Licenses to City Beverage by what can only be termed a "mistake" through unauthorized acts by prior administrators or legal representatives of the Commission and which were contrary to governing law. Therefore, the mistaken and unauthorized issuance of licenses to City Beverage could not trigger any reasonable reliance as that concept is used in equitable estoppel claims. *Id.* At 939-940. Therefore, as a matter of law, AB cannot even claim reasonable reliance, and as a result, any estoppel claims are defeated at the outset.

Third, even if the Commission had the power to renew a license that is banned by the Act (which it does not), and even if a claim of equitable estoppel was sustainable by AB based upon reasonable reliance (which it is not), there would still be no basis for equitable relief given the passage of P.A. 97-0005 in 2011. P.A. 97-0005 – passed in direct response to the District Court's decision – unquestionably bars an out-of-state producer from holding an ownership interest in an Illinois distributorship. To the extent that AB and City Beverage might claim it reasonably relied on some alternative construction of the statute prior to 2011 (such as the interpretation it advocated unsuccessfully before the Commission in 2010), the newly enacted statute clearly adopts the contrary position. Thus, like any other individual or entity, City Beverage's ability to avoid revocation is now governed by the newly enacted Act which clearly

bars AB's interest in City Beverage. There can be no claim that any theory of equitable estoppel immunizes an actor from being subject to a new legislative enactment. [2]

Fourth, providing equitable relief on the ground that a license had been previously issued is precisely the same as creating a grandfather clause allowing Brewers who currently own interests in distributorships to continue doing so. But that choice is for the Legislature alone to make, and the Legislature declined to enact a grandfather provision, despite AB's best efforts to secure such a measure. In the absence of such a provision, any decision on whether to renew or revoke a license must be made in accordance with the current law—which clearly bars any Brewer (other than a Craft Brewer) from also acting as a Distributor.

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[2] Even where a constitutionally protected property right is implicated, there is no constitutional right to a grandfather clause from a statute that reasonably regulates a field. *People ex rel. Sherman v. Cryns*, 203 Ill. 2d 264, 296 (2003) (woman who was ineligible for a license as a midwife under the newly enacted licensing requirements had no right to continue); *Gersch v. Illinois Dep't of Professional Regulation*, 308 Ill. App. 3d 649, 656 (1st Dist. 1999) (persons practicing as licensed social workers were not constitutionally entitled to a grandfather provision allowing then to continue despite their ineligibility under the newly enacted licensing standards).

In the context of liquor licensing, moreover, any claim of a constitutional right is further defeated by the fact that the Act declares, and Illinois courts have squarely held, that liquor licenses do not constitute "property" in the constitutional sense. See, 235 ILCS 5/6-1 ("A license shall be purely a personal privilege * * * and shall not constitute property"); *Black Knight Restaurant, Inc. v. Oak Forest*, 159 Ill. App. 3d 1016, 1018-19 (1st Dist. 1987) ("It is well established under Illinois law that a license to sell alcoholic beverages is a privilege, not a property right, and, thus, is not subject to due process protections."). See also, *Club Misty v. Laski,* 208 F.3d 615, 618 (7th Cir. 2000) (Federal Courts treat Illinois liquor licenses as property for some purposes, but the dictates of the Due Process Clause are satisfied where property interests are impaired by duly enacted legislation). Just as there is no doubt that a retailer may have its license revoked by a local referendum deciding to make a precinct dry (See, *Philly's v. Bryne,* 732 F.2d 87 (7th Cir. 1984)), there is no doubt that a liquor license may be revoked (or not renewed) by more traditional legislative action, such as occurred here.

Finally, even were a plausible claim to exist that the statute's lack of a grandfather clause somehow renders it unconstitutional, the Commission would still be bound to apply the statute as drafted, leaving any constitutional challenge to the courts. See, *Carpetland U.S.A. v. Illinois Dep't of Employment Security*, 201 Ill. 2d 351, 397 (2002) ("An administrative agency lacks the authority to invalidate a statute on constitutional grounds or to question its validity."). See also, *Texaco-Cities Service Pipeline v. McGaw*, 182 Ill. 2d 262, 278 (1998) ; *Cinkus v. Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 214 (2008) .

### 3. Granting Equitable Relief Would Unconstitutionally Perpetuate the Very Discriminatory Scheme that Was Found to Have Violated the Commerce Clause.

Both the Federal and Illinois Equal Protection Clauses secure every person within the State's jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents. See, U.S.C.A. Const. Amend. 14 and Article I, Section 2 Constitution of the State of Illinois.

In addition to all of the other reasons that granting equitable relief would be impermissible here, there is also a strong constitutional impediment to granting any such relief. It seems plain that were the Commission to provide equitable relief to those who held licenses previously, it would have to include all entities that had been licensed as Distributors prior to the 2011 enactment. This would include in-state Brewers as well as Non-Resident Dealers. Yet doing so would serve to perpetuate the pre-2011 differential treatment of in-state and out-of-state producers that the District Court condemned as unconstitutional. This is because out-of-state manufacturers were barred from holding Distributor Licenses as a matter of law for decades. Thus (aside from the mistaken Distributor Licenses issued to City Beverage), they were not able to secure licenses to distribute in Illinois. By contrast, in-state manufacturers were entitled to such licenses until 2011. Any grant of equitable relief would thus unconstitutionally make the right to a current license turn on a prior licensing scheme that favored in-state producers and has since been found unconstitutional. This perpetuation of an earlier unconstitutional scheme is it itself unconstitutional, even if couched in neutral terms of a grandfather clause. *Lane v. Wilson*, 307 U.S. 208 (1939) (A state could not require all new voters to take a literacy test, but exempt through a grandfather clause all those who were entitled to vote under the prior law that discriminated against African-Americans).

**4. AB will suffer no harm as a result of the disposition of its 30% interest in City Beverage.**

AB cannot be presumed to suffer any harm as a result of divestiture of its 30% interest in City Beverage. There is no showing that the prohibited interest of AB in City Beverage cannot be sold off or transferred by AB within any reasonable period of time. In fact the Commission has stated that any revocation of City Beverage's licenses would be "... stayed pending divestiture of ownership interests by Anhueser-Busch LLC..." (See, Citation and Notice of Hearing, Paragraph 5). This stay eliminates any claim AB would have to accept a reduced value for its interest due to any requirement of an immediate disposition via forced sale. However, determination of a reasonable period of time will in part be dependent upon the efforts undertaken by AB to actually obtain a divestiture. Nevertheless, any claim as to the diminishment in value should be met with considerable skepticism since a buyer for the existing 70% interest of City Beverage was readily found and partial interests in distributorships, if not entire distributorships, are bought and sold on a regular basis.

AB will likely contend it has invested significant sums of money in the operation of City Beverage in the state of Illinois and made decisions based upon the Commission's previously approving its 30% interest which cannot be recouped through the sale of same or which might not be captured in the amount of the purchase price it receives. However, just what do these investments and the financial aid provided by AB consist of? What are the actual amounts and what was the money utilized for by City Beverage? What are the specific benefits conferred upon AB including profitability as to the operation of City Beverage? What amount or degree of control do these investments provide AB? Just how much did AB contribute to the marketing and promotion of AB brands to retailers on behalf of City Beverage? Where these same amounts provided to other Illinois AB distributors? What is the cumulative effect and degree of control

that has been vested in AB as to the distribution agreement and possibly other agreements with City Beverage when added to its 30% ownership interest and other financial investments? Is this cumulative control even permitted under the Act? Why would these returns on investments, to the extent they are permitted under the Act, as between a Brewer and its Distributor, not be captured in the purchase price paid to AB? If the claim of additional investments is raised by City Beverage, the Commission should demand detailed answers to these questions and others at the hearing, for purposes of demonstrating, as a matter of record, that any equitable claims based upon any investments in the business of City Beverage are lacking in merit.

On the other hand, AB and City Beverage have had the prior underserved benefit of AB holding a 30% ownership, including making financial contributions and rendering financial aid, which are benefits unavailable to other Brewer or its Distributors. AB has always recognized that the passage of P.A. 097-0005 (also referred to as "Senate Bill 754") precluded its continued ownership as well as its continued financial participation in operations of City Beverage.

By Bulletin dated May 2, 2011, then AB president Dave Peacock advised Illinois AB distributors that AB's ownership would allow for "...financial aid to wholesalers who might otherwise not have the experience or capital to enter the industry or expand their operations..." Despite what might be an intended inference to the contrary based upon what is stated in the AB Bulletin, the referenced benefits to both a Brewer and Distributor would from a practical standpoint only flow to AB and City Beverage. Further, the experience or working capital possessed by a Distributor, though perhaps relevant for the initial appointment by a Brewer of an exclusive Distributor for a defined geographical area, or for purposes of approving a transfer of distribution rights by an existing Distributor, does not constitute an exception to application of Senate Bill 754 and the preclusion of a Brewer's ownership interest in a Distributor. (See,

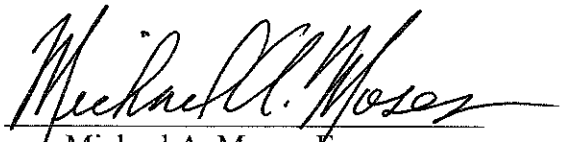
Peacock Bulletin dated May 2, 2011 to AB Illinois Wholesalers as to effects of passage of Senate Bill 754, attached as Exhibit "B," and, Letter dated January 10, 2001, from Chief Legal Counsel R. Stanton to Miller Brewing Company, requiring elimination of either its Non-Resident Dealer License or its Distributor License, attached as Exhibit "C" .)

The Commission cannot presume any harm would actually occur to AB as a result of it no longer possessing the single exception to the prohibition of a Brewer owning a 30% ownership interest in its exclusive Distributor. Moreover, the immediate elimination of this unjustified benefit to a single non-Craft Brewer cannot be said to cause any harm even since the benefit is contrary to law and has not been available to any other non-Craft Brewer.

## IV. CONCLUSION

For the reasons stated above AB possesses no right as a matter of law or equity to possess any interest in City Beverage and the Distributor Licenses of City Beverage should be revoked without necessity of any stay of the penalty by the Commission pending divesture of AB's interest.

**SIEGEL MOSES & SCHOENSTADT, P.C.**

By: 
Michael A. Moses, Esq.

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444 North Michigan Avenue, Suite 2600
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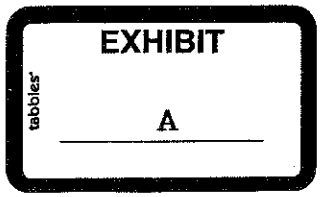
(312) 658-2000

Rep. Mautino: Thank you so much Ladies and Gentlemen of the House: Senate Bill 754 grants a limited option to Illinois and out of state start-up breweries, defined the bill as Craft Brewers, to self distribute beer products pursuant to a permit issued by the Liquor Control Commission. The permit process is similar to that previously adopted by the Illinois General Assembly for small wineries. This bill, except for the craft brewer exemption, continues the prohibition against self-distribution for out-of-state brewers and clearly extends that prohibition to Illinois brewers. The out-of-state brewers and Illinois brewers are treated equally as required by the Commerce Clause provisions of the US Constitution. In other words, all brewers in-state and out-of-state manufacturing beer above the craft brewer limits may not self distribute or own distributorships in Illinois. The bill is consistent with the clarifications suggested by Federal District Court in the case entitled *Anheuser-Busch et al. v. Stephen V. Schnorf et al.* Under this bill is the clear intent that Illinois continues to adhere to the three-tier system for the regulation of alcoholic beverages. This bill is in response to the court case which many of you have heard about up until now and I would be happy any questions. The Senate and Senator Trotter held about 10 meetings with Anheuser-Busch InBev, the Craft Brewers Guild, MillerCoors, Wine and Spirits Distributors of Illinois and the Illinois Licensed Beverage Association. I thank Senator Donne Trotter for his work as well as Rep. Greg Harris, Rep. Mike Bost, and Rep. John Bradley. I bring to you for your vote today Senate Bill 754. I appreciate your support.



Anheuser-Busch, Inc

May 2, 2011

TO: All Anheuser-Busch Illinois Wholesalers

ANHEUSER-BUSCH RESPONSE TO ILLINOIS SENATE BILL 754

As you are aware, Anheuser-Busch strongly opposes Illinois SB 754 because it unfairly restricts the ability of brewers – large and small – to compete in the marketplace.

The practice of brewery participation at the wholesaler level is not uncommon – federal law and half the states provide for it in some form. It assures brewers competitive market access, sometimes where the market is difficult, the business is low-share, or for other factors, such as allowing financial aid to wholesalers who might otherwise not have the experience or capital to enter the industry or expand their operations. This all leads to a healthier market that's better for wholesalers, retailers and ultimately the consumer and is fully consistent with our firm support of the three-tier system.

Recently, you received a Q&A from Bill Olson, Associated Beer Distributors of Illinois, that spreads misinformation about SB 754 and our position. To one question on the *"real reason"* we are interested in owning a licensed operation in Chicagoland, Mr. Olson responds: *"Market share. Anheuser-Busch InBev has a market share in the low to mid twenties in the Chicago metro area where MillerCoors' products are the market leader."*

Growing market share is an outrageous goal only to those who stand to lose business in a more competitive environment. We absolutely work to grow market share every day in every market – our business depends on it, as does yours. I don't believe it is ABDI's role to determine who should have what market share, nor how A-B and its wholesalers choose to lawfully pursue an improved competitive position.

Mr. Olson proclaims Anheuser-Busch is a *"foreign brewer"* and that the *"company owned and operated by the Busch family no longer exists."* Anheuser-Busch has been a publicly held company for decades, we brew and package beer at 12 U.S. breweries with local employees and our U.S. headquarters remains in St. Louis. Such irrelevant, emotional rhetoric has no place in a discussion on assuring that a competitive marketplace exists in Illinois.

As ABDI continues to spread falsehoods and innuendos, we will work to correct these with legislators and others, starting with the attached Q&A in response to Mr. Olson's. If you have any questions about our position, please contact Mark Bordas at (512) 236-9242 or Tom Roth at (314) 577-2575.

Sincerely,

Dave Peacock
President

EXHIBIT
tabbies
B

Anheuser-Busch, Inc.

# Response to ABDI Letter to Lawmakers Regarding Senate Bill 754
May 2, 2011

1. Why should the General Assembly act on the issue of brewery-owned distributorships?

   Judge Dow did not ask the General Assembly to act on the issue of brewery-owned distributorships in Illinois. Rather, he gave the General Assembly an opportunity to act if it chose to do so. In the meantime, the remedy is under appeal because the Liquor Control Act in fact has permitted all brewers to distribute under state license from 1934 through the present. There is absolutely no urgency to act now, before the appeal is decided.

2. How does SB 754 help resolve the discrimination that exists between in-state and out-of-state breweries?

   It doesn't. The Liquor Control Act has permitted all brewers – in-state and out-of-state – to distribute beer since 1934 *without discrimination*. The only issue here is the discrimination that resulted from the interpretation of the act in 2010 by the Illinois Liquor Control Commission (ILCC). Before that, the ILCC interpreted the act to permit all brewers to distribute beer.

3. Why did Judge Dow decide to not allow Anheuser-Busch to own distributorships?

   Judge Dow made no such decision. He looked at the ILCC's interpretation of the act, not the act itself, and correctly decided the ILCC acted in a discriminatory way. The court cannot create a law or public policy, and the judge made very clear the court would not.

4. Why does ABDI support SB 754?

   ABDI supports SB 754 because the bill will give it virtually complete control of beer distribution in Illinois – to its members' competitive and economic advantage. SB 754 is a significant departure from the way Illinois has historically regulated beer and threatens fair competition in the state. Neither A-B nor the Illinois Craft Brewers Guild support SB 754. It's bad for beer and consumers. The Guild, with 30 Illinois members, is against the bill because it could result in an even worse position for them than if no legislation was passed.

5. Doesn't A-B own distributorships in other states?

   Yes, and it's not uncommon. Federal law and half the states provide for brewers to own licensed distributors in some form. These states do so because the state remains in control of the middle tier through licensing, which assures transparency, taxation and protection of community interests, regardless of whether they are affiliated with a brewer or other business.

Anheuser-Busch is interested in City Beverage because the Chicagoland market is a difficult, cost-prohibitive market and its majority partner asked them to buy the remaining stake.

7. Didn't A-B own a distributorship in Illinois previously?

A-B has had a historic presence as a wholesaler in Illinois since the late 1800s. More recently, A-B owned a distributorship in Illinois from 1982 to 2005, and then rolled that ownership over into its ownership of City Beverage in 2005, without interruption. Every year, the ILCC issued A-B a distributor license because it correctly interpreted the Liquor Control Act as permitting brewers to hold distributors' licenses. The Illinois law governing this has remained consistent over the years – it did not change in 1982, so no "grandfathering" could have occurred.

8. Why now? What is the real reason A-B wants to own distributorships?

A-B has owned a distributorship in Illinois for more than 30 years. This is nothing new. The ILCC recently created an issue where none exists.

Brewer-owned distributorships assure brewers competitive market access, sometimes where the market is difficult, the business is low-share, or for other factors, such as allowing financial aid to wholesalers who might otherwise not have the experience or capital to enter the industry or expand their operations. This all leads to a healthier market that's better for wholesalers, retailers and ultimately the beer consumer.

9. What would the harm be if A-B owned distributorships?

None – just look at A-B's track record in Illinois. The ILCC has licensed A-B as a beer distributor in Illinois for more than 30 years, and it has operated as a responsible, compliant licensed wholesaler. In fact, during the lawsuit, the ILCC failed to produce any evidence that A-B's holding of a distributor license had <u>any</u> negative effect whatsoever.

10. What benefit do distributors provide to the market?

All distributors – regardless of ownership – provide value and service to retailers and communities through products, revenue, taxes and community support. A-B has been an outstanding distributor in large markets for decades – more than a century in Denver – and we remain a firm supporter of the three-tier system.

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# STATE OF ILLINOIS
# LIQUOR CONTROL COMMISSION



January 10, 2001

Miller Brewing Company
3939 W. Highland Blvd
Milwaukee, Wi 53208-0482

Re: Multiple tier licensing - Non-Resident Dealer and Distributor/Importing Distributor

Dear Licensee:

In the past year it has come to the attention of the Legal Division that there are a number of licensees who may be improperly holding licenses on different tiers. You are directed to review the following Sections 5/1-3.29, 5/5-1(m), 5/1-3.15, 5/5-1(b), 5/6-4 of the Liquor Control Act, a summary of which follows.

It is the considered opinion of the Legal Division that the Liquor Control Act specifically excludes manufacturers and non-resident dealers from the class of proper applicants for a distributor's and importing distributor's license; and distributors and importing distributors from the class of proper applicants for a manufacturers and non-resident dealer license.

The Commission licensing database indicates that you are presently improperly licensed under the above rationale. Your options appear to be to continue to be licensed as a Non-resident dealer and to secure another Illinois distributor or importing distributor to handle your products, or relinquish your Non-resident dealer license and continue to operate as an Illinois distributor or importing distributor; assuming in either case that you have the proper permit from the Bureau of Alcohol, Tobacco and Firearms, COLAs and Registration Statements.

Very truly yours,

John R. Stanton
Chief Legal Counsel
JRS/ps

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EXHIBIT
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